

## 211 CMR: DIVISION OF INSURANCE

### 211 CMR 93.00: COST AND EXPENSE CONTAINMENT STANDARDS FOR MOTOR VEHICLE INSURERS

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#### 93.01: Authority

211 CMR 93.00 is promulgated in accordance with the authority granted to the Commissioner by M.G.L. c. 175, § 113B.

#### 93.02: Purpose and Scope

211 CMR 93.00 establishes cost and expense containment standards pursuant to St. 1986, c. 622 for use in connection with the fixing and establishing of motor vehicle insurance rates by the Commissioner.

#### 93.03: Definitions

For the purposes of 211 CMR 93.00, the following words shall have the following meanings:

Bodyshop payments, payments made for or related to the repair and replacement of damaged motor vehicles, including reimbursements to automobile bodyshops for repair work done;

CAR, Commonwealth Automobile Reinsurers, created pursuant to M.G.L. c. 175, § 113H, or any successor organization;

Commissioner, the Commissioner of Insurance appointed under the provisions of M.G.L. c. 25, § 6, or his designee;

Division, the Division of Insurance within the Department of Banking and Insurance;

Fraudulent claims, claims submitted with the intent of receiving a larger payment from the insurer than the amount, if any, to which the claimant is entitled under the policy, including claims for (i) non-existent losses; (ii) amounts in excess of actual losses; or (iii) incidents which the claimant has arranged in an effort to receive an insurance payment;

Glass claims payment, payments associated with any Comprehensive or collision claim involving damaged glass;

Insurer, any insurance company authorized to write motor vehicle insurance in the Commonwealth;

MARB, the Massachusetts Automobile Rating and Accident Prevention Bureau or any successor licensed by the Division as a rating organization to act on behalf of insurers;

Motor vehicle insurance, motor vehicle policies or bonds, both as defined in M.G.L. c. 90, §§ 34A and 34O and M.G.L. c. 175, §§ 113A, 113C and 113L;

Presiding Officer, means the Commissioner or any person or persons designated by the Commissioner who shall preside over the hearing and render the findings, order and decision;

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Representative group of insurers, a group of insurers, representing at least 50% of the market in premium volume and 25% in number of insurers writing private passenger motor vehicle insurance in the Commonwealth in the most recent calendar year, selected so that the group is representative of the entire private passenger motor vehicle insurance industry in the Commonwealth. The group shall at a minimum be representative with respect to the following characteristics:

- (a) the proportions of non-servicing carriers and of servicing carriers in the group by premium volume shall be similar to the proportions of non-servicing carriers and of servicing carriers, respectively, in the industry as a whole;
- (b) the proportions of agency companies and of direct writers in the group by number of insurers shall be similar to the proportions of agency companies and of direct writers, respectively, in the industry as a whole; and
- (c) the proportions of stock companies and of mutual companies in the group by number of insurers shall be similar to the proportions of stock companies and of mutual companies, respectively, in the industry as a whole.

The group shall also be selected so that it meets at a minimum the following additional specific criteria:

- (a) It shall include companies of varying sizes, including at least one insurer with less than 1% of the market by premium volume;
- (b) It shall include companies with varying loss ratios, including at least one insurer whose loss ratio for all automobile coverages combined is among the lowest 10% and one whose loss ratio is among the highest 10% of companies which write more than 2% of the market by premium volume; and
- (c) It shall include at least one insurer which writes motor vehicle insurance in the Commonwealth only, one interstate insurer, one insurer whose policyholders reside primarily in towns with high territorial relativities, and one primarily in towns with low territorial relativities.

The selection of specific companies comprising the representative group shall be changed from year to year so that substantially all companies writing motor vehicle insurance in the Commonwealth will, over any six-year period, have been included in a representative group.

Servicing carrier, an insurer appointed pursuant to the Plan and Rules of Operation of CAR to issue and service motor vehicle insurance policies ceded to CAR;

Voluntary/ceded claims handling differential, differences in the manner in which insurers process claims of voluntary insureds versus claims of insureds under policies ceded to CAR as provided in M.G.L. c. 175, § 113H.

#### 93.04: Filing Requirements

(1) Time of MARB Filing. Unless the Presiding Officer prescribes a different filing schedule, the MARB shall file with the Division a St. 1986, c. 622 filing which conforms to the requirements of 211 CMR 93.00 at the same time that insurers make their advisory filing pursuant to 211 CMR 77.00.

(2) Scope of MARB Filing. The MARB's St. 1986, c. 622 filing shall address insurers' cost and expense containment programs in the following areas:

- (a) bodyshop payments;
- (b) voluntary/ceded claims handling differential;
- (c) fraudulent claims;
- (d) expenses; and
- (e) glass claims payments.

The Presiding Officer may, in his direction, limit the specific areas which the MARB filing must address in any particular year's hearing. In its filing, the MARB may present evidence of significant cost containment efforts in areas other than those designated in 211 CMR 93.04(2).

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(3) Content of MARB Filing. Unless otherwise ordered by the Presiding Officer, the MARB filing shall comply with all applicable provisions of 211 CMR 77.00. Except as limited by the Presiding Officer, for each of the specific cost and expense containment program areas identified in 211 CMR 93.04(2), the MARB filing shall include a narrative description of insurers' cost containment programs, together with the direct testimony, data and exhibits which the MARB would like considered in the hearing to fix and establish motor vehicle insurance rates. With respect to the bodyshop payments issue, the fraudulent claims issue, and the glass claims payment issue the MARB narrative shall describe and document the activities of a representative group of insurers. The MARB shall identify the insurers comprising the representative group in the format set out in Attachment A.

In describing and documenting each cost and expense containment program, the MARB filing must provide at a minimum the following: the name and title of the person responsible for the program; the number of employees and non-employees involved; the length of time the program has been in effect; the form of the program (e.g., formal program based on written plan, manual, or rules; or informal programs or procedures); the coverages and types of losses affected by the program; and the methods for auditing, monitoring and evaluating the program and its results.

The MARB filing must also document, for each cost and expense containment program, the amounts expended on the program in the most recently completed year and budgeted for the current year and the succeeding year; and the savings realized in the most recently completed year and anticipated in the current year and the succeeding year, in dollar amount, percentage of loss payments, and in terms of the impact on insurance rates. The MARB filing must demonstrate that each cost or expense containment program results in genuine cost or expense containment and not simply cost or expense transfer.

(4) MARB Filing on Bodyshop Payments Issue. In addressing the bodyshop payments issue, the MARB's filing shall address, at a minimum, issues raised in the Decision on 1987 Rates, including the following:

- (a) Parts costs - efforts insurers make to pay less than the full retail price for parts and to locate and, where appropriate, insist on the use of aftermarket parts and used and rebuilt parts;
- (b) Labor rates - efforts to determine whether labor rates are reasonable, to resist increases, or to lower rates;
- (c) Labor times - efforts to determine whether labor times are reasonable and whether they reflect times actually spent on the repair;
- (d) Bodyshop recommendations - to the extent permitted under 212 CMR (Auto Damage Appraisers Licensing Board), as interpreted by the Massachusetts courts, efforts to suggest or recommend that insureds use specific bodyshops, and that insureds do not use bodyshops whose methods or equipment are inefficient or outdated or whose charges are excessive;
- (e) Fraud - efforts to control fraud in the payment of bodyshops' or insureds' claims for repairs, towing or storage, or insureds' claims for reimbursement for total losses;
- (f) Total losses - efforts to ensure that insurers are not declaring a car a total loss which prudent claims evaluation would have shown could have been repaired at less cost;
- (g) Storage - efforts to ensure that storage times and charges are reasonable, or to reduce times or charges;
- (h) Towing - efforts to ensure that towing charges are reasonable or to reduce charges; and
- (i) General - efforts to ensure that bodyshops are not reimbursed for unauthorized repairs or charges, and efforts to provide formal training and continuing education for appraisers.

(5) MARB Filing on Voluntary/ceded Claims Handling Differential Issue. In addressing the voluntary/ceded claims handling differential issue, the MARB filing must demonstrate that ceded claims are processed with the same degree of diligence as are voluntary claims. The MARB filing must also specifically provide the following information:

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- (a) the identity of each servicing carrier whose internal systems or procedures enable persons handling claims to differentiate between ceded claims and voluntary claims;
- (b) the identity of each servicing carrier which has different programs, procedures or personnel for handling ceded claims and voluntary claims, with complete documentation for each such servicing carrier describing the different programs, procedures and personnel responsibilities; and
- (c) a comparison of claims which differ only in their status as ceded or voluntary claims.

For the purpose of this comparison, the MARB must evaluate a set of ceded claims and a set of voluntary claims, on the basis of criteria enumerated in the CAR "Tyler" audit, discussed in the Decision on 1987 Rates, including but not limited to, investigation and documentation in the following areas:

- 1. theft losses;
- 2. Personal Injury Protection and bodily injury claims;
- 3. salvage recoveries;
- 4. attempts to locate and use aftermarket parts;
- 5. storage charges;
- 6. appropriateness of labor charges; and
- 7. total losses.

The set of ceded claims must be randomly selected from the entire population of private passenger ceded claims made against all servicing carriers for the selected policy year. The sample size must be sufficiently large to be representative of the entire population of ceded claims.

The set of voluntary claims must be randomly selected from the entire population of private passenger voluntary claims made against all servicing carriers for the same policy year from which the ceded claims were selected. The sample size must be sufficiently large to be representative of the entire population of voluntary claims paid by the servicing carriers.

The selection techniques and sample sizes must be determined according to generally accepted statistical procedures, so that each set of claims is a statistically valid subset of the entire population from which each set was selected. The MARB filing shall explain in detail the specific methods by which each set of claims was selected.

(6) **MARB Filing on Fraudulent Claims Issue.** In addressing the fraudulent claims issue, the MARB filing must address efforts insurers make to identify all fraudulent claims, including but not limited to:

- (a) claims for non-existent incidents, damage or injury;
- (b) claims for substituted or non-existent vehicles;
- (c) claims for exaggerated damage or injury, such as inflated doctor's bills, repair shop bills, or wage statements;
- (d) duplicate claims for the same incident, damage or injury; and
- (e) claims for incidents which the claimant has arranged, such as theft, arson, or vandalism, in an effort to receive an insurance payment.

The MARB filing must also identify all efforts insurers make to implement internal and external programs and procedures to discourage or prevent the filing, processing and payment of fraudulent claims, including the efforts of each servicing carrier in the representative group to implement the anti-fraud program mandated by M.G.L. c. 175, § 113H, and the requirements of St. 1987, c. 44.

(7) **MARB Filing on the Expenses Issue.** In addressing the expenses issue, the MARB filing shall focus upon costs relating to allocated and unallocated claim adjustment expenses, general expenses, other acquisition expenses, and expense reimbursements to agents and brokers. With respect to these areas, the MARB filing shall address insurers' efforts to contain costs through the productive use of personnel, the use of computers and other methods of automation, and efforts to avoid duplication of the work of agents and payment of excessive salaries and other compensation.

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(8) MARB Filing on the Glass Claims Payments Issue. In addressing the issue of glass claims payments, the MARB's filing shall document insurers' efforts to reduce fraud connected with this coverage and to policy excessive pricing of parts and services. Specifically, the filing shall address:

- (a) Fraud - efforts to control fraud in the payment of glass claims for work not done or damage intentionally caused by the insureds, in order to, among other things, obtain promotional give-aways such as free tanks of gas;
- (b) Replacement glass costs - efforts insurers make to receive the maximum discount on replacement glass;
- (c) Labor times - efforts to determine whether labor times are excessive and whether they accurately reflect time spent on the repairs; and
- (d) Promotional give-aways - efforts insurers make to halt the practice of promotional give-aways such as free tanks of gas with windshield replacements covered by comprehensive insurance.

(9) Other Filings. Any other party to the hearing on motor vehicle insurance rates, including any statutory intervenor or the State Rating Bureau of the Division of Insurance, may file a response to the MARB filing submitted under 211 CMR 93.04, and may file any other information, documentation, written testimony, or hearing exhibits which are relevant or may assist the Commissioner in evaluating the adequacy of insurers' cost and expense containment programs. Unless the Presiding Officer directs otherwise, all submissions by other parties must be filed at the same time the other parties submit their filings pursuant to 211 CMR 77.00, and must comply with all relevant sections of 211 CMR 77.00.

93.05: Determination of Adequacy of Programs

- (1) The Commissioner shall evaluate the adequacy of insurers' cost and expense containment programs based upon the MARB filing, any other St. 1986, c. 622 filings made and the evidence introduced at the hearing to fix and establish motor vehicle insurance rates.
- (2) The MARB must demonstrate that insurers are making reasonable efforts to contain costs and expenses. The Commissioner shall evaluate insurers' programs in light of sound management practices, due diligence and the legal obligations of insurers to pay claims. In determining whether insurers' cost and expense containment efforts are adequate and reasonable, the Commissioner may consider alternative programs which exist elsewhere, or which he finds could reasonably be implemented.
- (3) The MARB will not be required to show that every insurance company has the same cost and expense containment programs. It will be sufficient to show that the practices and programs of a representative group of insurers, as defined above, meet applicable standards.

93.06: Adjustment of Premium Charges

- (1) In the event that the MARB fails to make the filing required by 211 CMR 93.04, that its filing is deficient, or that the Commissioner determines that insurers' cost and expense containment programs are inadequate, he may refuse to allow any increase in premium charges for affected coverages which insurers recommend in their filing pursuant to 211 CMR 77.00.
- (2) The Commissioner may make such other adjustments in premium charges to reflect the adequacy or inadequacy of insurers cost and expense containment programs based on the evidence introduced during the hearing to fix and establish motor vehicle insurance rates as he determines to be appropriate.

93.07: Severability

If any section or portion of a section of 211 CMR 93.00 is held invalid by a court either on its face or as applied, the remaining portions and sections of 211 CMR 93.00 shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 93.00: M.G.L. c. 175, § 113B as amended by St. 1986, c. 622.

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Name of Companies Selected to Comply with 211 CMR 93.00 Requirements

Insurer with less than 1% of the market	_____
Insurer with loss ratio in lowest 10% of those companies writing more than 2% of the market by premium volume	_____
Insurer whose policyholders reside primarily in towns with high territorial relativities	_____
Insurer whose policyholders reside primarily in towns with low territorial relativities	_____

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Name of Company	% of Market by Premium Volume	Servicing/ Non- servicing	Agency Direct Writer	Stock/ Mutual Company	Loss Ratio for All Coverages Combined	Interstate or Commonwealth Only